

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Bhanwar Lal & Anr. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 917/2002
against the order dated 17-10-2002 passed
by the Addl. Sessions Judge, Ratangarh,
Camp Sujangarh, in Criminal Revision No.
31/2002.

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Date of Order: October 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pritam Solanki, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 17.10.2002 passed by the Additional Sessions Judge, Ratangarh, Camp Sujangarh (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 31/2002, whereby the revision petition filed by the petitioners against the order dated 24-4-2002 passed by the Judicial Magistrate, Sujangarh (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the

orders passed by the trial Court as well as the Revisional Court.

It is contended by the learned counsel for the petitioners that the occurrence took place on 22-5-1998 and the FIR was lodged on the very day. After investigation, the police submitted negative final report on 11-8-1998. A protest petition was filed on 2-12-1998. Thus, registering the FIR and filing the protest petition are within the limitation, but the trial Court took cognizance of the offence on 24-4-2002, which is barred by the limitation. The offences are punishable for a period not exceeding one year and, therefore, the period of limitation is one year from the date of the offence. Learned counsel submits that the impugned order is barred by limitation in view of the provisions of Section 468 of the Code.

The contention raised by the learned counsel of the petitioner in this regard cannot be accepted in view of the decision *Bharat Damodar Kale Vs. State of Andhra Pradesh*, (2003) 8 SCC 559, wherein the Hon'ble Apex Court held as under:-

" A cumulative reading of various provisions of Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence

either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code.

Apart from the statutory indication, the said view also gets support from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of the court. The legal phrase "*actus curiae neminem gravabit*" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant."

Keeping in view the decision of the Hon'ble Supreme Court in *Bharat Damodar Kale vs. State of A.P.* (supra), it cannot be said that the order of the trial Court taking cognizance is barred by limitation. For any time consumed by the police for

investigation and thereafter by the trial Court in passing the order taking cognizance of the offences, no fault can be attributed to the complainant. In the circumstances, therefore, the Revisional Court was justified in dismissing the revision petition and affirming the order of the trial Court taking cognizance. In the circumstances, therefore, no case for interference in inherent jurisdiction is made out.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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